

D.T.E. 03-76-F

August 20, 2004

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for year 2001 by March 31, 2002, and their annual returns for year 2002 by March 31, 2003, and to pay statutory forfeitures.

In the Matter of:

Globalcom, Inc.

03-76-22

Maxxis Communications, Inc.

03-76-26

I. INTRODUCTION

The Department of Telecommunications and Energy (“Department”) requires that all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e., telecommunications services, must be registered by having an approved tariff on file with the Department as well as a current statement of business operations.

Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); G.L. c. 159, § 12. All common carriers of telecommunications services within the Commonwealth also must file with the Department annual returns for the year ended December 31 by March 31 of the following year, in a format prescribed by the Department. Annual Returns, D.T.E. 03-76, Vote and Order to Open Investigation at 1 (2004) (“Vote and Order”); Annual Returns, D.T.E. 02-13, Vote and Order to Open Investigation at 1 (2002); G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11.

Any telephone company that neglects to file the required annual return by the deadline forfeits to the Commonwealth five dollars per day for the first 15 days, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the return is filed.

G.L. c. 166, § 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in additional penalty. Id. If the Department finds that a common carrier has neglected to make returns as required by law, the Department is obligated to present the facts to the Attorney General for enforcement. G.L. c. 159, § 39.

A number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for year 2002. Although this Order pertains to two investigations of failure to file annual returns with nearly identical facts, the dockets are not consolidated, and thus the findings of fact and directives issued in this Order are applicable to each company, individually.

II. PROCEDURAL HISTORY

On February 3, 2004, the Department opened separate investigations into the failure by 40 telephone companies to file annual returns and pay statutory forfeitures to the Commonwealth, including 25 telephone companies that failed to file their 2002 annual returns and pay statutory forfeitures. Vote and Order. The Department determined that these 25 companies were registered during 2002 to provide telecommunications services in the Commonwealth, because, at the time of the Vote and Order, the Department had on file approved tariffs and statements of business operations for these carriers, and the Department had these documents on file during 2002. Id. at 1.

The Department opened investigations into the 40 companies, docketing each separately as indicated in Appendix A and Appendix B to this Order.¹ This Order pertains to the

¹ In the Vote and Order, the Department opened investigations regarding Paramount International Telecommunications, Inc. ("Paramount"), docketed as D.T.E. 03-76-12, and TeleCents Communications, Inc. ("TeleCents"), docketed as D.T.E. 03-76-34. However, the Department subsequently discovered that TeleCents had in fact complied with the annual return filing requirement, and did not owe an overdue annual return or statutory forfeitures. Paramount complied with the Notice of Investigation and Hearing (April 21, 2004) by filing its annual returns for 2001 and 2002, each showing no intrastate revenues. The Department notified the companies that they were in
(continued...)

following dockets: Globalcom, Inc., D.T.E. 03-76-22; and Maxxis Communications, Inc., D.T.E. 03-76-26.

Pursuant to notice (“Notice”) duly issued,² the Department conducted public and evidentiary hearings in each of these proceedings on April 14, 2004, and May 25, 2004. Neither company entered an appearance. The evidentiary record in each proceeding contains four exhibits.³

III. ANALYSIS AND FINDINGS

A. Introduction

Prior to commencing these investigations, the Department granted an extension for filing of 2002 annual returns past the March 31, 2003 annual deadline without incurring the

¹(...continued)

compliance, and that it had cancelled the hearings involving TeleCents and Paramount and dismissed both cases. D.T.E. 03-76-34, Hearing Officer Memorandum Re: TeleCents Communications, Inc. (April 30, 2004); D.T.E. 03-76-12, Hearing Officer Memorandum Re: Paramount International Telecommunications, Inc. (May 14, 2004).

² The Department sent a Notice of Hearing and Investigation to the last known address of each of the companies on February 4, 2004 and April 21, 2004, and published the Notice in the Boston Globe on April 26, 2004.

³ Because the exhibits in each proceeding are identical types of documents, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; e.g., “Exhibit 1.” Exhibit 1 is the company’s statement of business operations, as filed with the Department. Exhibit 2 is the cover page of the company’s tariff, filed with the Department and in effect in 2002. Exhibit 3 is the August 22, 2003 letter the Department’s Telecommunications Division sent to the company, extending the 2002 annual return filing deadline to September 19, 2003. Exhibit 4 is the late-filed 2002 annual report of the company.

statutory forfeiture, but only if the company filed by the new deadline.⁴ The Department extended the filing deadline for 2002 to September 19, 2003, and notified the telecommunications companies by certified mail. Id. The Department did not grant any additional extensions.

The Department served Notice of its investigation and hearing upon the companies, advising each company that the Department was investigating the company's neglect to file annual returns on time and pay the statutory forfeitures owed, and that failure to respond or to produce the information requested in the notice would lead to adverse findings of fact and orders for corrective action. See Vote and Order at 2-4. The companies responded by filing their overdue 2002 annual returns (Exh. 4), but not the associated forfeitures for the late filings.

B. Globalcom, Inc.

Globalcom, Inc. ("Globalcom") was a registered common carrier of telecommunications services during year 2002, because the company had an approved tariff and statement of business operations on file with the Department that year. D.P.U. 93-98, at 12. Therefore, Globalcom was obligated to file an annual return for 2002 pursuant to G.L. c. 159, § 32; G.L. c. 166, § 11. Vote and Order at 1-2. Globalcom responded to the

⁴ The Department has the authority to set a deadline for filing annual returns other than March 31 "for good cause shown." G.L. c. 159, § 32. The extension of the filing deadline applied only to companies that filed by the new deadline. Because the companies named in this Order did not file their annual returns by the extended deadline the Department offered, their forfeitures are calculated from the original statutory annual due date of March 31. See D.T.E. 02-13-A; D.T.E. 02-13-D; D.T.E. 02-13-F.

Notice of hearing by filing its 2002 annual return on May 4, 2004 (Exh. 4). The return indicated that Globalcom earned intrastate revenues in Massachusetts in 2002. However, Globalcom did not participate in the hearing or pay the statutory forfeitures owed for the overdue return.

Accordingly, because Globalcom neglected to file its 2002 annual return by March 31, 2003, the Department finds that the daily statutory forfeiture to the Commonwealth of Massachusetts pursuant to G.L. c. 166, § 12 applies, calculated from that date, up to May 4, 2004, when it filed its 2002 return late.

The Department also must consider whether the company's refusal or neglect to file was unreasonable. G.L. c. 166, § 12. Every telephone company that files a tariff and a statement of business operations with the Department makes a representation that it has the managerial, technical, operational, and financial ability to comply with statutory requirements and the Department's tariff review process, and the Department deems a registered company capable unless it specifically finds otherwise. See D.P.U. 93-98, at 12. Globalcom failed to file a timely 2002 annual return, and has not paid the accrued statutory forfeitures associated with the late-filed return.

Moreover, in addition to failing to appear on either of the two hearing dates, Globalcom failed to respond on a timely basis to notice from the Department's Telecommunications Division reminding the company that it failed to file its annual return, and extending the filing deadline (Exh. 3). Although the Department is not required to provide reminders to companies that have represented to the Department that they have the ability to

comply with the Commonwealth's statutory requirements, Globalcom's failure to respond in a timely manner compounds its neglect of its reporting obligations. Accordingly, the Department finds that the refusal or neglect on the part of Globalcom, Inc. to pay the statutory forfeitures is unreasonable. Therefore, in addition to the daily forfeiture, the additional \$500 forfeiture, as provided in G.L. c. 166, § 12, is applicable to Globalcom, Inc. for failure to pay statutory forfeitures associated with the late-filed 2002 annual return.

The daily forfeiture⁵ for the 2002 annual return, accrued between March 31, 2003, and May 4, 2004, a total of 399 days overdue, is \$5,760. With the additional \$500 forfeiture, the total forfeiture Globalcom owes is \$6,260.

B. Maxxis Communications, Inc.

Maxxis Communications, Inc. ("Maxxis") was a registered common carrier of telecommunications services during year 2002, because the company had an approved tariff and statement of business operations on file with the Department that year. D.P.U. 93-98, at 12. Maxxis responded to the Notice of hearing by filing its 2002 annual return on May 3, 2004 (Exh. 4). The 2002 return indicates that Maxxis' 2002 intrastate operating revenues were \$73.59 and it had no intrastate operating expenses.⁶ Further, the letter accompanying the annual return filing states that, on December 15, 2003, "Maxxis

⁵ Pursuant to G.L. c. 166, § 12, the statutory forfeitures are calculated at the rate of five dollars per day for the first 15 days overdue, ten dollars per day for the next 15 days, and 15 dollars per day for each day thereafter until the date the overdue annual return was filed.

⁶ Although not required for this proceeding, Maxxis enclosed a copy of its 2003 annual return, indicating intrastate revenues of \$6.98 for 2003 (Exh. 4).

Communications, Inc. and its affiliates filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code” and that the cases are pending before the United States Bankruptcy Court for the Northern District of Georgia (Exh. 4).

Because Maxxis Communications, Inc. had negligible revenues in Massachusetts in 2002, the Department finds that Maxxis was not “doing business in the commonwealth” during year 2002 for purposes of G.L. c. 166, §§ 11, 12, and that the forfeitures required to be paid to the Commonwealth, pursuant to G.L. c. 166, § 12, therefore do not apply. See D.T.E. 02-13-G at 3-4. The Department further finds that the additional \$500 forfeiture for unreasonable refusal or neglect to file is not applicable for the same reason, and because Maxxis filed its return. G.L. c. 166, § 12. See D.T.E. 02-13-G at 4 n.2. The company was required to attest to its intrastate revenues during the year 2002, and the filed annual return, albeit late, makes the required attestation. See id.

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is ORDERED that Globalcom, Inc. shall immediately pay to the Commonwealth of Massachusetts the applicable statutory forfeitures for its late-filed 2002 annual return, consistent with this Order; and it is

FURTHER ORDERED that the findings reached herein are applicable to Globalcom, Inc., individually, in docket D.T.E. 03-76-22; and it is

FURTHER ORDERED that the findings reached herein are applicable to Maxxis Communications, Inc., individually, in docket D.T.E. 03-76-26; and it is

FURTHER ORDERED that the findings of fact and directives herein shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

APPENDIX A

Telephone companies that failed to file annual returns for years 2001 and 2002

<u>Carrier</u>	<u>Docket Number</u>
ESS.Com, LLC	03-76-1
Euronet Communications Corp.	03-76-2
Gerson Group	03-76-3
Long Distance Billing Services, Inc.	03-76-4
Massachusetts Local Telephone Company	03-76-5
Maxcess, Inc.	03-76-6
Maxtel USA, Inc.	03-76-7
Norstar Communications, Inc.	03-76-8
Ntera, Inc.	03-76-9
Optical Telephone Corporation	03-76-10
Paradigm Communications Corporation	03-76-11
Paramount International Telecommunications, Inc.	03-76-12
Pride America, Inc.	03-76-13
SecurFone America, Inc.	03-76-14
StormTel, Inc.	03-76-15

APPENDIX B

Telephone companies that failed to file an annual return for year 2002

<u>Carrier</u>	<u>Docket Number</u>
Americom Technologies	03-76-16
CCMA	03-76-17
Columbia Telecommunications, Inc. d/b/a aXessa	03-76-18
ConnectAmerica, Inc.	03-76-19
Equal Access Communications, LLC	03-76-20
Global Crest Communications, LLC	03-76-21
Globalcom, Inc.	03-76-22
Integrated Communications Consultants	03-76-23
Intelecall Communications, Inc.	03-76-24
LD Exchange.Com, Inc.	03-76-25
Maxxis Communications, Inc.	03-76-26
Natel, LLC	03-76-27
North American Telephone Network, Inc.	03-76-28
PF.Net Network Services Corporation	03-76-29
Power-Finder West Communications, LLC	03-76-30
Radiant Telecom, Inc.	03-76-31
TalkingNets Holdings, LLC	03-76-32
Talk Unlimited Now, Inc.	03-76-33
TeleCents Communications, Inc.	03-76-34
Telis Communications Group, Inc.	03-76-35
Touch America, Inc.	03-76-36
TransNet Connect, Inc.	03-76-37
UKI Communications, Inc.	03-76-38
United States Telecommunications, Inc.	03-76-39
WDT World Discount Telecommunications Company	03-76-40